

## LAW AND THE ART WORLD

## Reader concerns, giclee “originals” and hype

By Bill Frazier ©2012

A number of readers have called recently with a variety of questions, and several have commented on what seems to be the increasing hype associated with giclee prints, and specifically those printed on canvas known also as canvas transfers.

There seems to be an enterprising “artist” down south who has developed an interesting scheme. He prints giclee reproductions of his work on canvas, then makes a few adjustments to the image with his brush or palette knife, and then sells the resulting products as original paintings. He can produce as many as his printer can print.

This is an extreme example of what has come to be called “enhanced” prints that have been on the market for several years. Enhanced prints are those that have been printed, then partially touched with a swipe of the paintbrush or palette knife or otherwise modified by the artist or an assistant to be sold at an “enhanced” price. They are not represented as originals.

This new scheme takes things a step beyond. The artist is actually reproducing his same image over and over, signing each as though it were an original, and then passing off each as an entirely new original work. I also understand that this same person has followed this same process with other artists’ work without permission. This is not only a copyright infringement regarding the other artists, but probably also fraud. In any case, it is clearly a misrepresentation of what is being sold.

The point of this information is that buyers must continue to educate themselves about the activities of the art marketplace, question what a particular art product is, and exercise due diligence in their purchases, and deal with reputable galleries and artists.

New technologies can produce new art forms, but they can also produce new frauds. The sale of art from an artist, show or gallery to a buyer creates a contract. It is important for both sides of the contract to understand what is being sold and bought.

Despite the clarity and technical integrity of the giclee prints, they are still reproductions and not originals. No amount of hype can make them anything else. Giclees are very good reproductions, and the current state-of-the-art in print technology, but they are still just reproductions of original works of art.

I cannot help but be reminded of all of the hype associated with the marketing of limited edition prints back 20 or 30 years ago and the adverse effects it eventually had on the overall art market. It all ended up being a caricature of itself – everything was marketed as a limited edition, from tools to cars to clothing.

**Pay attention to invitations**

As I have in the past, I caution artists to pay attention to the materials enclosed with their invitations to participate in art shows and auctions. These are beginning to arrive in the mail and sometimes perfectly legitimate sale terms can be confusing.

If the invitation is to an auction, please remember the distinctions in “with reserve” and “without reserve.” In a without-reserve auction, a piece can be sold regardless of how low a bid may be. A with-reserve auction provides the protection of a reserve price below which an item cannot be sold. Keep in mind that a request for an estimated selling price or “value” to appear in the auction catalog is not a reserve price.

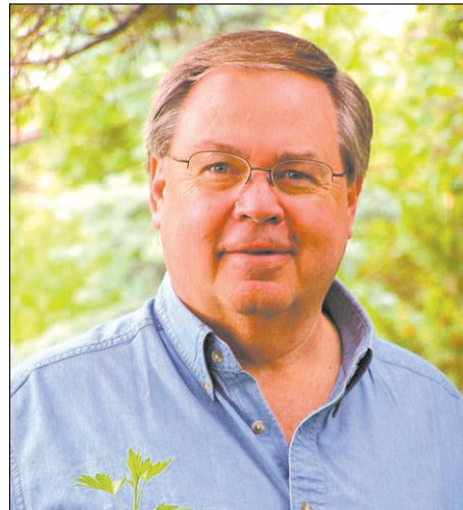
If your invitation is to enter a show, be sure to read all of the materials with the invitation, as all of these documents together will form your contract with the sponsoring gallery or other organization. By being informed, the possibility of later problems is reduced.

**Indian Arts and Crafts Act**

In an earlier article, I discussed the Indian Arts and Crafts Act and how it applies to Indian artists, jewelers, potters and other craftsmen, and the benefits and abuses. Most galleries and shops display, label and sell correctly, but a few do not.

Again, buy from reputable dealers and galleries and watch out for flea market and gift shop “Indian” jewelry. I recently saw what looked like turquoise, but was in fact, dyed agate. Remember, despite what you may be offered on late-night television sale shows and in some tourist shops, there is no natural purple turquoise.

Indian jewelry does not come from China, Turkey or Mexico. It may be silver, turquoise and beautifully crafted, but it cannot be called Indian. The same applies to the origin of pottery, leatherwork, and any other crafted products. These things cannot be called Indian unless they are fabricated by an enrolled



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member of a federally recognized tribe or otherwise fall under the restrictions and protections of the act.

**If it sounds too good to be true ...**

Artists, continue to be aware of the variety of frauds and scams aimed at you and others in the art market. Just remember, as we have all heard over and over again, that if it sounds too good to be true, it probably is.

Do not get confused by so-called awards that you have to pay for or bear some financial burden to receive. Do not get involved in convoluted overseas sales and shipping transactions. Most are scams even when quite innocent-sounding.

If you simply cannot resist the enticement, call your lawyer or other advisor for a more objective analysis of the proposal, and whatever you do, do not give out social security numbers, pin numbers and bank-account numbers.

Do not open strange email attachments. They may contain computer viruses or be an attempt to hack or steal your personal information or various other attempts at identity theft.

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**Find “Law and the Art World” online**

Bill Frazier’s “Law and the Art World” series is also available online with other articles from this and previous editions of *State of the Arts*.

Now there is a quick and easy way to search within “Law and the Art World” for Frazier’s legal perspective on specific topics. His articles have been regrouped into 11 categories under the title “Artists’ Legal Advice.” In these, Frazier discusses contracts, auctions, taxes, copyright issues and other subjects of recurring interest to artists.

Please bear in mind Frazier’s important advice when using the resource: “... Don’t forget that the law is a dynamic and ever-changing thing.”

To reach the collection of articles, go to the arts council website at [www.art.mt.gov](http://www.art.mt.gov) and select the *State of the Arts* link on the right side of the home page. That takes you to the *State of the Arts* “News Articles” page and a drop-down box under the “View articles for specific section”; then choose “Artists’ Legal Advice” from the drop-down menu.

## Tech Talk: Photographing artwork, Part 2

By Mark Ratledge

In the last issue of *State of the Arts*, I wrote about the process involved in taking quality photographs of artwork. You need high-quality photographs if applying for a grant or a gallery show of your work, or if you’re photographing artwork for a website or brochure.

Your photographs are the only way to show your artwork to others, so your images need to be the best you can afford.

A quick recap:

- Use a good quality camera (typical point-and-shoots will not give clean and flat images due to small lenses).
- Use a tripod to hold and steady the camera (you need to concentrate on framing the image and not on holding the camera).
- If working with 2-D art, line up your artwork with the camera to be sure the artwork is square with the camera sensor (or film plane, if you’re shooting film) in order to get an undistorted image.
- Use a manual exposure setting to be sure you shoot at F8 or smaller aperture. (This will mean slow shutter speeds when shooting inside, and that’s another requirement for a tripod.)
- And don’t use a flash.

One more important aspect of photographing artwork is the type of light used

in the area where you are photographing. This might surprise you, but all light is not created equal. Daylight and interior lighting are different color spectrums, even though they appear to be both mostly white to our eyes.

Different sources of light contain different amounts of the different colors of the spectrum that, when mixed together, make up the “white” light that we see outside in daylight and from light fixtures inside.

But a digital camera sensor (and photographic film) must be “told” what spectrum of light is being used. The most common light spectrum is, of course, daylight. But two other very common spectrums are the tungsten lighting of interior incandescent bulbs, and fluorescent lighting – either energy-saver bulbs or tubes. (There are many other spectrums generated by artificial lights, but tungsten and fluorescent are the most common you’ll come across.)

How do you adjust a digital camera for a certain light spectrum? A good digital camera will have what is called a “white



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balance” setting; this allows you to tell the camera what kind of spectrum you’re using. Look through your camera menu or the owner’s manual to find white-balance settings.

Some cameras will auto-detect white balance, but you may have better results if you manually set it. You should be able to set your camera to daylight, tungsten or fluorescent.

Inexpensive cameras won’t allow white-balance settings, and if you tried photographing artwork in the past and got wonky colors, that’s why: the camera wasn’t able to auto-detect a white balance.

Try some test shots and see how they look on a computer monitor and printed out. And if you’re shooting film, you need to buy either tungsten or daylight film to match the light you are using.

So, to get good photos of your artwork: consider the light and use a tripod and a good camera.